Article 6.

Witnesses.

**Rule 601. General rule of competency; disqualification of witness.**

(a) General rule. – Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witness in general. – A person is disqualified to testify as a witness when the court determines that the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her, or (2) incapable of understanding the duty of a witness to tell the truth.

(c) Disqualification of interested persons. – Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his or her interest or title by assignment or otherwise, shall not be examined as a witness in his or her own behalf or interest, or in behalf of the party succeeding to his or her title or interest, against the executor, administrator or survivor of a deceased person, or the guardian of an incompetent person, or a person deriving his or her title or interest from, through or under a deceased or incompetent person by assignment or otherwise, concerning any oral communication between the witness and the deceased or incompetent person. However, this subdivision shall not apply when:

(1) The executor, administrator, survivor, guardian, or person so deriving title or interest is examined in his or her own behalf regarding the subject matter of the oral communication.

(2) The testimony of the deceased or incompetent person is given in evidence concerning the same transaction or communication.

(3) Evidence of the subject matter of the oral communication is offered by the executor, administrator, survivor, guardian or person so deriving title or interest.

Nothing in this subdivision shall preclude testimony as to the identity of the operator of a motor vehicle in any case. (1983, c. 701, s. 1; 2011-29, s. 2.)

**Rule 602. Lack of personal knowledge.**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses. (1983, c. 701, s. 1.)

**Rule 603. Oath or affirmation.**

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so. (1983, c. 701, s. 1.)

**Rule 604. Interpreters.**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation. (1983, c. 701, s. 1.)

**Rule 605. Competency of judge as witness.**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. (1983, c. 701, s. 1.)

**Rule 606. Competency of juror as witness.**

(a) At the trial. – A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. – Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes. (1983, c. 701, s. 1.)

**Rule 607. Who may impeach.**

The credibility of a witness may be attacked by any party, including the party calling him. (1983, c. 701, s. 1.)

**Rule 608. Evidence of character and conduct of witness.**

(a) Opinion and reputation evidence of character. – The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion as provided in Rule 405(a), but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. – Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility. (1983, c. 701, s. 1.)

**Rule 609. Impeachment by evidence of conviction of crime.**

(a) General rule. – For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from the witness or established by public record during cross-examination or thereafter.

(b) Time limit. – Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court

determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon. – Evidence of a conviction is not admissible under this rule if the conviction has been pardoned.

(d) Juvenile adjudications. – Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. – The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. (1983, c. 701, s. 1; 1999-79, s. 1.)

**Rule 610. Religious beliefs or opinions.**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced; provided, however, such evidence may be admitted for the purpose of showing interest or bias. (1983, c. 701, s. 1.)

**Rule 611. Mode and order of interrogation and presentation.**

(a) Control by court. – The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. – A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) Leading questions. – Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. (1983, c. 701, s. 1.)

**Rule 612. Writing or object used to refresh memory.**

(a) While testifying. – If, while testifying, a witness uses a writing or object to refresh his memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) Before testifying. – If, before testifying, a witness uses a writing or object to refresh his memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have those portions of any writing or of the object which relate to the testimony produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and conditions of production and use. – A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and

to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains privileged information or information not directly related to the subject matter of the testimony, the court shall examine the writing or object in camera, excise any such portions, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be one striking the testimony or, if justice so requires, declaring a mistrial. (1983, c. 701, s. 1.)

**Rule 613. Prior statements of witnesses.**

In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel. (1983, c. 701, s. 1.)

**Rule 614. Calling and interrogation of witnesses by court.**

(a) Calling by court. – The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. – The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. – No objections are necessary with respect to the calling of a witness by the court or to questions propounded to a witness by the court but it shall be deemed that proper objection has been made and overruled. (1983, c. 701, s. 1.)

**Rule 615. Exclusion of witnesses.**

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause, or (4) a person whose presence is determined by the court to be in the interest of justice. (1983, c. 701, s. 1.)

**Rule 616. Alternative testimony of witnesses with an intellectual or developmental disability in civil cases and special proceedings.**

(a) Definitions. – The following definitions apply to this section:

(1) The definitions set out in G.S. 122C-3.

(2) Remote testimony. – A method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – An individual with an intellectual or developmental disability who is competent to testify may testify by remote testimony in a civil proceeding or special proceeding if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum and that the ability of the witness to communicate with the trier of fact

would be impaired by testifying in the presence of a named party or parties or from testifying in an open forum.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony also shall do all of the following:

(1) State the method by which the witness is to testify.

(2) List any individual or category of individuals allowed to be in or required to be excluded from the presence of the witness during testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the witness.

(4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.

(5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. Except as provided in this section, the court shall ensure that the counsel for all parties is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. In a proceeding where a party is representing itself, the court may limit or deny the party from being physically present during testimony if the court finds that the witness would suffer serious emotional distress from testifying in the presence of the party. A party may waive the right to have counsel physically present where the witness testifies.

(f) Nonexclusive Procedure and Standard. – Nothing in this section prohibits the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of an individual with an intellectual or developmental disability. (2009-514, s. 1; 2018-47, s. 3(a).)